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IN THE

Supreme Court of the United States

October Term, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

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INDEX

	Page
Question Presented	1
Structure of the American Labor Movement	3
The International Unions	3
Local and International	7
Federations and Their Subordinate Units	12
Federation and International	18
Summary	23
Application of the Statute	25
The Board's Construction	25
Alternative Constructions	27
Conclusion	30
Appendices	
C.I.O. Constitution	33
A.F.L. Constitution	35
Textile Workers Constitution	37
Steelworkers Constitution	39
Teamsters Constitution	41

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The Congress of Industrial Organizations (C.I.O.) submits this brief *amicus curiae* to the Court in the genuine belief that it will aid the Court in the resolution of the question here presented. The parties have consented that this brief be filed, and letters so indicating have been submitted to the Clerk.

THE QUESTION PRESENTED

The question in this case arises out of sections 9 (f), (g), and (h) of the Labor-Management Relations Act. These sections establish certain conditions precedent to action by the National Labor Relations Board on petitions or charges filed with it by unions. Sections 9 (f) and (g) require the filing of organizational and financial reports with the Department of Labor. Section 9 (h) requires the filing of non-Communist affidavits.

These conditions are imposed both directly and indirectly. It is required, in the first place, that the labor organization filing the petition or making the charge shall itself comply

with these conditions. In the majority of cases, this first requirement refers to the local union representing the employees in the particular collective bargaining unit. In addition to the condition applicable to the organization directly involved, there is a second requirement—that "any national or international labor organization of which such labor organization is an affiliate or constituent unit" also comply. We thus have two required layers of compliance—(1) the labor organization directly involved and (2) any *national or international* labor organization of which that organization is an affiliate.

The issue in the case arises from the fact that in the American labor movement there are many additional organizational levels than the local and international. The precise question is whether the statute requires compliance not only by the locals and by the international unions with which they are affiliated but also by the federations with which the international unions are in turn affiliated. Not directly involved but tangentially present are the further and similar questions as to whether *all* organized layers with which a local may be affiliated, directly or indirectly—the city, county, state, regional, industrial, national and foreign organizations—must also comply in order for that local to utilize the processes of the Board.

The case does *not* involve any question as to whether the C.I.O. and A.F.L.—the two major federations—are themselves "labor organizations." That is to say, if the C.I.O. were to act as a "labor organization" and itself file a petition or a charge, there is no question that it, as the "labor organization" involved, would be required to comply with sections 9 (f), (g), and (h). The questions here arise only when the C.I.O. is admittedly not the "labor organization" involved and it concerns only the secondary requirement that the "national or international labor organization" with which the charging labor organization is affiliated also must comply. The question, in short, is whether the C.I.O. bears the relationship of a "national or international" to the unions which are affiliated with it.

Resolution of this question necessarily involves consideration of the sense in which the words "national or international" are used in the statute and consideration of whether

the C.I.O. bears the relationship thus described to the unions which compose it. Both phases of the question require an understanding of the structure of the American labor movement for their proper decision.

THE STRUCTURE OF THE AMERICAN LABOR MOVEMENT

The International Unions

The history of the American labor movement is, in large part, a history of the organization of separate, autonomous unions in each craft or industry. Such unions predated the existence of any country-wide federations, and the history of the federations is largely a history of affiliation and disaffiliation by pre-existing trade unions.[1]

The first unions were local unions. The first nation-wide federation of significance—the National Labor Union—was a loose federation of city centrals, national unions, local unions and various non-union social reform organizations. After the demise of the National Labor Union in the last decades of the 19th century the definitive structure of the American labor movement was established by the failure of the Knights of Labor and the success of the American Federation of Labor.

The Knights of Labor had an integral structure. The national organization exercised direct control over smaller geographic units which were, in turn, composed of local units. Some of the local units were limited to a particular trade and others were general in their jurisdiction. The lines of authority and control over both types went directly from the local units to the general area organizations and then to the General Assembly of the Knights of Labor. It was, really, one big union.

The American Federation of Labor, on the other hand, was not conceived of as one national union but as a federation of unions, each national in scope. Nor did the A.F.L. begin to build from local union units. It was an alliance of national

[1] The history is summarized in Brumm, *Brief History of the American Labor Movement* (1947) published by the Bureau of Labor Statistics, United States Department of Labor, which contains a bibliography of more detailed studies.

unions already in existence. Those unions preserved their identity, their autonomy, their jurisdictions and their sovereignty. They did not create one new union but an alliance of existing unions and a mechanism for the creation of new unions which would enter into the alliance as equals.

The basic structure which characterized the American Federation of Labor was maintained by the Congress of Industrial Organizations. The cause of the split between the A.F.L. and the C.I.O. was a disagreement as to whether, in organizing the mass production industries, the jurisdictional lines between the separate, autonomous unions should be drawn on an industry or a craft basis. There was no disagreement concerning the basic assumption that the federations as such were not unions but only associations of independent unions. Indeed, that assumption was underlined by the fact that the C. I. O. was itself simply a new federation of pre-existing autonomous international unions which had left the American Federation of Labor.

The basic structural characteristic of the American labor movement thus is, and has been since the disappearance of the Knights of Labor and the I.W.W., the organization of employees in each craft or industry into separate independent associations confined to that craft or industry and nation-wide in scope. These associations are customarily and usually referred to as national or international unions. The union is national when its membership is confined to the United States. It is international if it admits to membership persons employed in Canada. In both cases, the unions are American and not "international" in the normal use of that word. Compare, for example, the International Labor Organization or the International Confederation of Free Trade Unions, which are truly international in the sense that they are composed of representatives of unions in the various nations.

Most American unions, as a matter of fact, describe themselves as international unions whether or not they have Canadian members, and the term "international," used as a noun, has come to be the common way of distinguishing the nation-wide unions from their constituent local unions on the one hand and the two great federations on the other.

Thus, the directory of affiliated unions published by the American Federation of Labor lists the following different kinds of affiliates:

National and International Unions
Departments
State Branches
City Centrals

The international unions listed include such unions as:

The Journeymen Barbers, Hairdressers and Cosmetologists' *International* Union of America
International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America
Bricklayers, Masons and Plasterers *International* Union of America
Cigarmakers' *International* Union of America
Coopers' *International* Union of North America
International Photo Engravers Union of North America
International Glove Workers' Union of America
The Granite Cutters' *International* Association of America
International Hod Carriers, Building and Common Laborers' Union of America
International Molders and Foundry Workers Union of North America
International Printing Pressmen's and Assistants' Union of North America
International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada
Seafarers *International* Union of North America
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Upholsterers' *International* Union of North America

Similarly, the Congress of Industrial Organizations contains such unions as:

The *International* Union, United Automobile, Aircraft, and Agricultural Implement Workers of America
The *International* Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America
Oil Workers *International* Union
Playthings, Jewelry, and Novelty Workers *International* Union
The *International* Woodworkers of America

Other unions do not use the term "international" in their formal names but are nevertheless international unions in the

sense in which that term is used in trade union parlance. Thus, the constitution of the United Steelworkers of America is entitled "Constitution of International Union, United Steelworkers of America," and it provides in Article I:

> "This Organization shall be known as the United Steelworkers of America, hereinafter also referred to as the International Union."

Similarily, the constitution of the Retail, Wholesale and Department Store Union provides in Article I:

> "This organization, international in scope, shall be known as the Retail, Wholesale and Department Store Union. (It is hereinafter also referred to as the International Union or International.)"

Again, Article I of the constitution of the United Furniture Workers of America provides:

> "Section 1. This organization shall be known as the United Furniture Workers of America, hereinafter also referred to as the International Union."

On the other hand, there are independent, A.F.L. and C.I.O. unions which are known as "national unions." See, e.g., *National* Maritime Union (C.I.O.); *National* Union of Marine Cooks (Ind.); the *National* Marine Engineers Beneficial Association (C.I.O.); *National* Federation of Post Office Clerks (A.F.L.); *National* Farm Labor Union (A.F.L.); *National* Association of Master Mechanics and Foremen of Navy Yards and Naval Stations (A.F.L.); American Federation of State, County, and Municipal Employees (A.F.L.).

As the listings above indicate, the "international" unions greatly outnumber the "national" unions and, hence, the term "international" has acquired the common usage previously indicated. Whether the short-hand form of that usage—i.e., "international" used as a noun to describe both "national" and "international" unions—or the full "national or international union" is used, it is clear that what is being referred to is a nation-wide organization of employees in a particular craft or industry, as distinguished from local unions on the one hand and the great federations on the other.

Local and International

Since the national and international unions are independent bodies, governed by their own constitutions and laws, their internal structures vary greatly. There are, however, certain basic similarities.

The aspect of the internal organization of the internationals which is significant here is the relationship between the internationals and the subordinate bodies which may file charges or petitions with the National Labor Relations Board. In almost all internationals there are such subordinate bodies.

In most unions the subordinate bodies are known as locals, although they are sometimes referred to as lodges or branches. These locals may be shop or plant locals—that is, their jurisdiction may be limited to the employees in a particular collective bargaining unit—or they may be amalgamated locals, containing employees of various employers within the geographical area. The local composed only of employees in a particular plant or shop is perhaps typical of the industrial unions organized in the C.I.O., while the amalgamated local is more usually found in the craft A.F.L. unions.

In some internationals the locals have considerable autonomy. They negotiate collective bargaining contracts, call strikes, apply to the N.L.R.B. for certifications in their own names and generally operate with little interference by the international. In this kind of an international, the local union very often has a name of its own, descriptive of its particular jurisdiction, and describes itself as "affiliated" with the international union.

In other internationals, on the other hand, the locals occupy a much more subsidiary position. Contracts are negotiated by the international union and strikes are called by it. In this type of union, certification from the Labor Board is usually sought by the international in its own name and unfair labor practice charges filed by it. The locals are usually known simply as "Local No. —" and may properly be called constituent parts of the international. See *Harker* v. *McKissock* (N. J. Super. Ct., App. Div.) 27 LRRM in which the court contrasted the two types of internal union structure and found the union in question, a C.I.O. union, to be of the affiliated type.

In addition to the locals, there are often intermediate subsidiary organizations, sometimes organized on a geographical basis—as in the case of the Joint Councils of the Teamsters Union—and sometimes on an industrial basis—as in the case of the departments of the C. I. O. Textile Workers Union.

Despite this variation in internal structure, there are certain distinguishing characteristics which normally exist in the relationship of the subordinate bodies to the internationals. These characteristics are present whether the structure is of the loosely affiliated or the closely integrated type, and perhaps can be seen most clearly if the constitutions of two typical unions are examined. The A.F.L. Teamsters' Union (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) is perhaps the most prominent example of the loosely affiliated type. Its locals are often given separate, identifying names which describe the particular craft jurisdiction of the local. See, e.g., *Cooperative Industries, Inc., Employer . . . and General Warehousemen's Local Union No. 418, affiliated with I.B.T.C.W. & H. of A., A.F.L.*, 85 NLRB 1258; *Service Trade Chauffeurs, Salesmen, and Helpers, Local 145 (also known as Food, Beverage and Express Drivers Local Union No. 145), affiliated with I.B.T.C.W. & H. of A., A.F.L. and The Howland Dry Goods Company*, 85 NLRB 1037; *Paraffine Companies, Inc., Employer and General Warehouse, Food Processors, and Cannery Workers Union, Local 655, affiliated with I.B.T.C.W. & H. of A., A.F.L., Petitioner*, 85 NLRB 325. Normally, the locals—and not the international—appear on the ballot and contracts are made by it rather than the international. And, as in the above cases, the local is often described as "affiliated" with the Teamsters international.

An example of a more integrated type of union is the United Textile Workers Union, the union involved in this case. Its locals are usually known simply by their local numbers. Normally, the international—and not the local—appears on the ballot and contracts are negotiated in the name of the international. The local is best described as a constituent of rather than as affiliated with the international.

Taking the Textile Workers and the Teamsters as examples

of the integrated and affiliated types of union structures, we find the following:

A) *Collective Bargaining.* Whatever degree of autonomy a local or other subordinate body may be given, ultimate control of the conduct of collective bargaining is normally retained by the international. In the more loosely organized internationals, the control may be supervisory only. In the more integrated unions, the international may itself conduct or participate in all collective bargaining and be a contracting party. The types of control are exemplified by the unions selected as examples.

The constitution of the Teamsters' Union provides that a local must submit to a Joint Council and to the General President of the Union a copy of any wage proposal to be made to an employer. (Art. XII, Sec. 12(a)) No contract entered into between a local and an employer is valid until approved by the General President of the International or unless approval is specifically waived. (Art. XII, Sec. 12(d)) It is further provided that the International can compel a local union to arbitrate a controversy with an employer not covered by a local union agreement. (Art. VI, Sec. 3)

The Textile Workers' constitution provides simply that negotiations for collective agreements and their terms and conditions shall be subject to the approval of the General President of the International. (Art. XVI, Sec. 1)

B) *Strikes.* The degree to which an International Union controls strikes again varies between different international unions, but, again, some degree of control is normally always provided for. Where locals are empowered to call strikes, the procedure which must be followed by the local, including necessary voting procedures before the strike is called, are normally prescribed in the international constitution. Sometimes it is provided that no strike shall be called without the approval of the international union. Where such direct control is absent, indirect controls are provided for by the provision of an international defense fund which pays benefits to striking locals only when the strike has received the approval of the international organization.

In the Teamsters Union, a detailed voting procedure is pro-

vided which must be complied with before a local can call a strike. (Art. XII, Sec. 1) There is no provision specifically requiring the approval of the international union before a strike can be called but it is provided that notification shall be given to the Joint Council and to the General President prior to the institution of a strike. (Art. XII, Sec. 1 (c)) Additional controls of strikes are provided for by virtue of the defense fund. If a strike has the approval of the international union, weekly strike benefits are payable. (Art. XII, Sections 2–5) Even if the strike is an approved strike and benefits are paid to the striking union members, the General President of the international is authorized to declare the strike at an end and thus to terminate the financial aid of the international union. (Art. XII, Sec. 8)

The Textile Workers Union contains an explicit provision forbidding any units of the union to engage in any strike or concerted action without the authorization and approval of the General President of the international. The General President is also given the authority to declare that any strike or other type of concerted action shall be terminated. (Art. XVII)

C) *Internal organization of locals.* The basic organizational structures of the locals and of other subsidiary bodies are normally prescribed by the international. The international constitution of each of the unions here being examined states what officers there shall be, how they shall be elected, and what their duties shall be. (Teamsters Const. Art. XXI; Textile Workers Const., Art. X)

In addition to prescribing the structure of the local unions, the international constitutions normally provide that the international may discipline local unions and their officers. Thus the constitution of the Teamsters Union provides elaborate procedures for the preferring of charges against local unions, officers, and members and for the trial of such charges (Art. XVIII). The Textile Workers Constitution contains similar provisions (Art. XIII).

In addition to punishment by expulsion from membership or removal from office, international union constitutions normally provide for suspension or revocation by the international of the local union charter. In the event of such suspension

or revocation, the international officers are given authority to take over the property and the affairs of the local union, to appoint administrators, and to sequester the property of the locals. Such provisions are contained in the constitutions of the Teamsters Union (Art. VI, Sec. 6) and the Textile Workers Union (Art. XIII, Sec. 6).

The financial affairs of the local are normally closely supervised by the international. Thus the Teamsters Union Constitution prescribes detailed procedures which must be followed by the local secretary-treasurers in collecting funds, keeping books, and paying bills (Art. XXII). In addition, the international reserves the right to audit and inspect the books of any local union (Art. X, Sec. 12). Similar, although less detailed, provisions are contained in the constitution of the Textile Workers Union (Art. X, Sec. 6, Art. XII, Sections 2 and 5).

In the Teamsters Union and in the Textile Workers Union the international constitution provides a minimum schedule of dues, but the ultimate determination of the dues to be paid by individual members is left to the local unions. (Teamsters const., Art. XIV, Sec. 2; Textile Workers const., Art. XII, Sec. 2). In other unions, such as the United Steelworkers of America, the amount of the individual membership dues is specified in the international constitution and cannot be varied by the local (Art. XIV, Sec. 1).

D) *Inter-Local Relationships.* Since the members of local unions within the internationals are also members of the international, the international constitution normally prescribes the qualifications for membership (Teamsters const., Art. II, Sec. 2; Textile Workers const., Art. XI; Steelworkers const., Art. III). It is normally also provided that a member of the international union may transfer his membership from one local to another without payment of initiation fees or loss of the rights attendant upon membership in the union. (Teamsters Const., Art. XVII; Textile Workers Const., Art. XI, Sec. 7; Steelworkers Const., Art. XV). These provisions demonstrate that whatever the internal structure of the international union, membership in the particular local gives an individual rights not only within the local but also within the international and its other locals.

The Federations And Their Subordinate Units

The C. I. O. and the A. F. L. are associations of unions—not unions. This much is, of course, obvious from the organization charts. What is not so obvious is the fact that the relationship between federation and affiliated international is not in any way comparable to that between international and local. It is not just a repetition, at a higher echelon, of the relationship of parent and subsidiary which exists between an international and its locals.

On the contrary, the relationship is one of free association of independent, autonomous entities. The international unions exist independently of the federation and they are not subject to its authority. They manage their affairs in accordance with their own varied constitutions without any power of interference by the federation. They have the power to affiliate and disaffiliate at will. They manage their own collective bargaining, without supervision or control by the federations. And they each control completely the method of election to office and the qualifications for office.

The federations, furthermore, do not exist simply at a higher level above the internationals. They have their own local subdivisions, in relation to which they act very much as the internationals act toward their subdivisions. The precise character of the federations, and the scope of their functions can, indeed, best be seen by analyzing their own internal composition. Since both of the major federations are similarly constituted we will examine here the structure of the C. I. O., the organization directly concerned.

The C. I. O. is, as its name indicates, an organization composed of industrial unions—a congress of industrial organizations. These organizations are of three principal types: (1) national and international unions, (2) industrial union councils and (3) local industrial unions. There is a fourth, transitional type, known as an organizing committee.*

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* The American Federation of Labor has the same composition. It comprises (1) national and international unions, (2) State Federations and local Central Labor Unions and (3) Federal and Local Trade Unions. The fourth, or transitional, type of organization is known in the A.F.L. as a council.

The national and international unions have already been discussed. The other types will be described briefly.

The industrial union councils are local or regional sub-federations. For each state in which unions affiliated with the C. I. O. exist, there is a state industrial union council. This council is a federation of local unions within the state.[3] There are, also, local or county federations which similarly are composed of the local unions within these small geographical areas. In the C. I. O., these are known as local industrial union councils.[4]

These sub-federations perform at state and local levels the same functions as are performed by the C. I. O. and the A. F. L. at the national level. The relationship between the sub-federations and the locals affiliated with them is thus a microcosm of the relationship between the federations and their affiliated internationals. But the relationship can perhaps be seen more clearly at the local or regional level, since there exist superior bodies to which both the sub-federations and the local unions are subordinate and hence the division of authority is more explicitly stated.

The sub-federations are completely subordinate to the national federations. They exist only by virtue of charters granted by the federations and are governed by rules promulgated by them. The C. I. O. constitution provides, in Art. III, Sec. 4:

> "Industrial Union Councils shall be organized upon a city, state or other regional basis as may be deemed advisable by the Executive Board and shall be composed of the locals of national unions, international unions and organizing committees, and local industrial unions and local industrial union councils within the territorial limits of such council. . . . The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of industrial union councils. The decision of the Executive Board may be appealed to the convention, provided, however, that pending the appeal the decision shall remain in full force and effect."

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[3] Similar state sub-federations are known in the A.F.L. as state federations.

[4] In the A.F.L., they are known as Central Labor Unions.

These sub-federations, while thus being entirely subordinate to the national federation, are composed of affiliated locals which are entirely subordinate to their own international unions (or in the case of the local industrial unions to be described below, to the C. I. O.).

While such a relationship may appear to create a confusion of authority, no such confusion exists because the distinction between the functions of the federation and the internationals is carried over to the local level. The sub-federations exist to provide such aid to their affiliated local unions as those local unions may request and to co-ordinate and consolidate the legislative and public relations work of those unions. They are service agencies for the affiliated locals and their internationals. Thus the C. I. O. Rules governing Industrial Union Councils, issued by the C. I. O. Executive Board pursuant to its constitutional power to govern these sub-federations, provide:

> "16. Councils shall lend all possible assistance to the organizing activities of local unions and their parent organizations affiliated directly or indirectly to the C. I. O., or of the C. I. O., but only at the request or with the approval of such local unions, parent organizations, or the C. I. O. Councils shall take no action in matters related to organizing in conflict with the requests or instructions of any such local parent organization, or the C. I. O.
>
> "17. No Council shall interfere in the internal affairs of any local union or its parent organization, affiliated directly or indirectly to the C. I. O., nor shall any Council assume powers over local unions or Councils which properly belong to the parent organizations thereof or to the C. I. O."

These rules indicate clearly the primacy of the international unions and the lack of any authority in the federations to interfere with either collective bargaining or the internal affairs of the internationals.

It should be noted that the rules above quoted do include reference to requests *by the C. I. O.* to aid organizing activities of local unions and to the powers over local unions which properly belong "to the C. I. O." These provisions relate to the third

type of organization affiliated with the C. I. O.—the directly chartered local unions, known as local industrial unions or, for short, "L.I.U.'s".*

The local industrial unions are local unions which have no international. They are unions—that is they have individual members whom they represent in collective bargaining, they engage in strikes, and otherwise perform the functions of unions. But they are part of no international. With respect to them the C.I.O. *does* perform the functions of an international. Thus Article III, Sec. 3 of the C. I. O. Constitution provides that:

> "The Executive Board shall issue rules governing the conduct, activities, affairs, and the suspension and expulsion of local industrial unions."

and those rules do provide for control by the C. I. O. of collective bargaining, strikes, etc., by the L. I. U.'s.

The existence of these local industrial unions does not contradict the picture of the federations as central, consultative bodies of independent, autonomous trade unions. These local unions are temporary organizational devices used only pending the establishment of internationals. One of the functions of the federations is to aid in the organizing of the unorganized in jurisdictions in which no international exists. This is sometimes done by setting up local unions directly subordinate to the federations and, when a sufficient number of such locals are established, relinquishing control over them to newly organized international unions.

Both the A. F. L. and the C. I . O. were formed by preexisting independent international unions. These unions were extremely jealous, as they are today, of their internal autonomy within their respective jurisdictions. It was not intended, in creating the A. F. L. or the C. I. O. to create a new union which would compete with the internationals, or to lay the basis for "one big union." The authority of the federations to set up directly chartered locals was, therefore, strictly circumscribed and it was made mandatory that the federation's role

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*In the A.F.L. such unions are known as Federal or Local Trade Unions.

as a union be strictly temporary. Thus, the constitution of the American Federation of Labor provides, in Art. IX:

> "Sec. 3. The Executive Council shall use every possible means to organize new National or International Trade or Labor Unions, and to organize Local Trade and Federal Labor Unions, and connect them with the Federation until such time as there is a sufficient number to form a National or International Union, when it shall be the duty of the President of the Federation to see that such organization is formed.
>
> "Sec. 4. When a National or International Union has been formed, the President shall notify all Local Unions of that trade to affiliate with such National or International Union, and unless said notification be complied with, within three months, their charters shall be revoked."

And the constitution of the C. I. O. similarly provides, in Art. III, Sec. 3:

> "It shall be the duty of the Executive Board to combine local industrial unions into national or international unions or organizing committees."

That this is the manner in which the federations operate is exemplified by the rapid turnover in L. I. U. charters in the C. I. O. This is shown in the annual reports submitted by the President of the C. I. O. to its convention and published as part of the convention proceedings. In 1947 there had been 391 Local Industrial Unions in existence.[6] The 1948 report shows that during the year 151 locals were transferred to international unions, 15 new locals were chartered, and 37 were cancelled, leaving a total of 218.[7] The 1949 report shows 37 new L. I. U.'s, 20 transfers to internationals and 29 cancellations, leaving a total of 206.[8] The 1950 report shows 90 new L. I. U.'s, 57 transfers, and 15 cancellations, leaving a total of 224.[9] Thus, in a three year period a total of 142 local industrial unions had been chartered, and 228 had been transferred to internationals or organizing committees. The number in existence at the end of the period—224—was less than the

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[6] Proceedings, 9th C.I.O. Constitutional Convention (1947), p. 71.
[7] Proceedings, 10th C.I.O. Constitutional Convention (1948), p. 66.
[8] Proceedings, 11th C.I.O. Constitutional Conventional (1949), p. 82.
[9] Proceedings, 12th C.I.O. Constitutional Convention (1950), p. 96.

number which had been transferred during the period. And that number—224—was infinitesimal compared with the 70,000 estimated labor union locals in the United States[10] or even the 2,000 locals in the Steelworkers union or the 1,000 locals in the Auto Workers union.[11]

Directly chartered local unions thus serve as a mechanism by which new internationals are organized in industries or trades in which no international exists. They are transient phenomena. The total membership of the L. I. U.'s directly chartered by the C. I. O. is less than 1 percent of the membership of the international unions affiliated with it.

The transition from local industrial union to fully autonomous national or international union cannot be accomplished overnight. Hence, there is an intermediate form of organization known in the C. I. O. as an organizing committee and in the A. F. L. as a council. These organizations perform the functions of an international. Organizing committees in the C. I. O. issue charters to locals, elect officers and executive boards and often hold conventions in the same way as international unions. They exercise the same control over the locals and over the collective bargaining process as do internationals. They differ from internationals only in that their form of organization is temporary, pending the establishment of a permanent international. In some cases the C. I. O. retains some measure of control during this transitional period. In others, the organizing committee is entirely independent but some of its officers are appointed by the C. I. O.

The pattern of organization in unorganized industries is thus, first, directly chartered local industrial unions, second, organizing committees, and third, fully autonomous national or international unions. This has been the pattern of such C. I. O. unions as the Packinghouse Workers, the Retail, Wholesale and Department Store Workers Union and others. The first stage in this development—the directly chartered L. I. U.—is relatively minor. As soon as there exist a sufficient number of L. I. U.'s to warrant the creation of an organizing committee or an international, the L. I. U.'s disappear.

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[10] U. S. Department of Labor, *Directory of Labor Unions* (1950), p. 3.
[11] Proceedings, 12th C.I.O. Constitutional Convention (1950), pp. 96, 99.

Indeed, in most cases, particularly where a large scale organizational campaign is begun from scratch, the first stage is omitted altogether and an organizing committee is established in a field where there are few or no local industrial unions. This was, in fact, the manner in which such major C. I. O. unions as the United Steelworkers of America and the Textile Workers Union were established.

Federation and International

An examination of the constitution of the C. I. O. immediately demonstrates the sharp distinction between the relationship of the C. I. O. to its subordinate bodies (the local and regional federations and the few directly chartered locals) and its relationship to the affiliated internationals. The constitution gives to the Executive Board of the C. I. O. plenary control over the subordinate bodies. But it gives no powers to the C. I. O. with respect to the international unions.

Thus, there are no provisions concerning collective bargaining, no provisions concerning strikes, no provisions concerning the internal organization of the internationals. These matters are not C. I. O. matters. They are union matters, controlled by the internationals without supervision or direction by the central body with which those organizations are affiliated.

The C. I. O., indeed, does not even have power to definitely adjust conflicts between internationals. The only provision dealing with that subject is Section 6 of Article VI, which provides only for recommendations by the C. I. O. Executive Board:

> "Sec. 6. Any dispute between two or more affiliates may be submitted to the Executive Board which shall make such recommendations to the parties in dispute as it shall deem advisable and report to the convention."

The only power the C. I. O. has with respect to an affiliated international is to terminate the affiliation. It cannot dissolve an international, or take its property, or suspend its officers, or in any other way interfere or direct the international's affairs. If there is conflict between a particular international and the other internationals affiliated with the C. I. O. and

this conflict cannot be resolved, then the C. I. O.'s only power is to dissolve the affiliation. It cannot, as can an international with its locals, suspend the offending body, sequester its property and direct its affairs.

Similarly, the C. I. O. cannot prescribe the qualifications for office in an affiliated international, although international unions can and frequently do so with regard to their own locals. Specifically, the internationals can make Communists ineligible for local union office.[12] The federations have no such power with regard to the internationals. The federations can control only eligibility for federation office. If a particular international chooses to permit Communists to hold international or local union office, the federation can only refuse to permit such officers to serve also as federation officers[13] or it can regard this as a sufficient basis to make the international ineligible for continued association in the federation.[14] But other than this it has no authority to discipline the international. Compare Art. VI, Sec. 6, of the A. F. L. constitution which gives the President disciplinary authority, but only with respect to "State Federations of Labor, City Central Labor Unions, and Local and Federal Labor Unions," i.e., only the subordinate units of the federation itself.

The Fourth Circuit, in the instant case, emphasized the role of the A. F. L. and the C. I. O. in the formulation of the no-strike policy during the second world war. Examination of the material relied on, however, emphasizes the nature of the C. I. O. and A. F. L. as herein set forth. The no-strike policy was evolved at a labor-management conference called on December 11, 1941, by President Roosevelt. Invited to this conference were twelve representatives each from labor and from business. As a result of this conference a three-point program was agreed upon, which included the pledge that there should be no strikes or lockouts and that all disputes should be settled by peaceful means.[15]

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[12] See Constitution, Textile Workers Union of America, Art. VIII, Sec. 6; Constitution, United Steelworkers of America, Art. III, Sec. 4.
[13] C.I.O. Constitution, Art. VI, Sec. 8.
[14] C.I.O. Constitution, Art. VI, Sec. 10.
[15] See Termination Report, National War Labor Board, Vol. 2, p. 1038.

The labor members at this conference were selected by the C. I. O. and the A. F. L. And, it is true that the A. F. L. and C. I. O. unions generally adopted the no-strike policy which was agreed upon at the conference. But this imports no more concerning the authority of the A. F. L. and the C. I. O. with respect to strikes and collective bargaining than does the fact that the employers of the country generally followed the policies recommended and agreed to by the industry representatives at the labor-management conference, who had been selected by the chairman of the Business Advisory Council to the Department of Commerce. In both cases, it was recognized that the representatives were acting as advisers only. The no-strike policy, and the no-lockout policy, were general statements of intention made by a representative sample of leaders of separate unions and separate employers. The C. I. O. and the A. F. L. had no more power to bind their affiliated unions than would the Chamber of Commerce or the National Association of Manufacturers have the power to bind their associated employers.

The contrast between the role of the international and the role of the C.I.O. can be seen in another way, by comparing the financial assets and expenditures of the C.I.O., with those of its affiliated internationals. In the fiscal year 1948-49, the total expenditure of the C.I.O. was under 3 million dollars and its net worth was well under 2 million dollars.[16] During approximately the same period, just *one* of the internationals affiliated with the CIO—the Steelworkers—had an annual rate of expenditure of almost 9 million dollars and a net worth of almost 8 million.[17]

Similarly, dues of members of international unions affiliated with the CIO average about $2 per month. Usually about half of this sum is retained by the locals and half paid over to the international. Yet the per capita payments of the internationals to the CIO are only ten cents per month. L. I. U.'s, on the other hand, pay a per capita tax of one dollar per month to the CIO (Constitution, Art. VIII, Sec. 2), since, with re-

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[16] *C.I.O. News*, December 19, 1949, p. 2.

[17] *Steel Labor*, January, 1949, p. 11; July, 1949, p. 11.

spect to them the CIO performs the function of an international.

These financial figures emphasize what the organizational structure makes clear—that it is the internationals which are the unions and which do the work. The federation is a relatively small organization which has the purpose of providing central legislative, research, publicity and organizational services.

Again, most internationals have full-time officers, paid by the international and subject to its orders alone. Most C. I. O. officers, on the other hand, are not full-time officers and are not paid by the C. I. O. but by the international unions in which they hold office. The President of the United Steelworkers, for example, also serves—without compensation—as President of the C.I.O. The General Counsel of the Steelworkers also serves—without compensation—as General Counsel of the C.I.O. Eight of the nine vice-presidents of the C. I. O. are officers of international unions and perform their C. I. O. functions without compensation in addition to their full-time positions as international union officers. The only officer of the C. I. O. at this time who does not hold elective office in an international union is the C. I. O.'s Director of Organization, Allan S. Haywood, and he has been elected as chairman of various organizing committees.

Having thus described the structure of the C. I. O. and the lack of authority of the C. I. O. over its affiliated internationals, the question naturally arises as to what the C. I. O., as distinguished from its affiliated international unions, actually does.

It does not—except with regard to the relatively insignificant number of L.I.U.'s—engaged in collective bargaining or call strikes. What it does do can best be seen by listing the various headquarters departments of the CIO and stating briefly, their functions.

Department of Research & Education: publishes the CIO Economic Outlook and various pamphlets concerning current national economic and social problems, consults and cooperates with governmental statistical economic and social agencies, cooperates with the educational programs of the individual

international unions, and conducts, by arrangement with the Economic Cooperation Administration, orientation classes for foreign visitors.

International Affairs Department: Handles, with the C. I. O. International Committee, the participation of C. I. O. in international organizations such as the International Confederation of Free Trade Unions and maintains contacts, with the CIO Latin American Affairs Committee, with South and Central American labor organizations.

Publicity Department: Publishes the C. I. O. News, handles newspaper and radio publicity, and distributes material prepared by other departments and committees.

Organization Department: Is in charge of organizing in unorganized industries, directs local industrial unions.

Department of Industrial Union Councils: Supervises and coordinates the work of the local and state sub-federations.

Legislative Department: Serves to co-ordinate the work of the legislative representatives of the various internationals and to press for the CIO legislative program. It also transmits to the internationals reports on the legislative situation.

Legal Department: Represents the CIO in court and before governmental agencies and consults with and advises the officers and the departments of the CIO. Gives advice and assistance, where requested, to the legal representatives of the affiliated internationals.

In addition to these staff departments there are several committees which do specialized research, publicity, legislative and representation work:

Political Action Committee
Committee to Abolish Discrimination
International Affairs Committee
Latin American Affairs Committee
Health, Safety and Welfare Committee
Regional Development and Conservation Committee
Social Security Committee
Committee on Taxes
Community Services Committee
Housing Committee
Maritime Committee
Organizing Committee (Southern drive)

The work of all of these committees and departments, as well as of the field staff which operates under the Organization Department, is under the direction of the President of the C. I. O. and follows the policies determined by the Executive Board and the annual conventions.

The Executive Board is "composed of one member from each affiliated national and international union and organizing committee." (Const., Art. IV, Sec. 3). The industrial union councils and local industrial unions are not represented on it.

The convention is composed of delegates from the various affiliated and subordinate organizations. Representation is based on membership. Larger unions are allotted 8 delegates for the first 100,000 members and one additional delegate for each additional 50,000. Smaller unions have proportionately larger representation. L. I. U.'s and industrial union councils are represented at the convention by one delegate each. (Art. VII, Sec. 6.) Voting strength at the conventions is not determined by the number of delegates, however. On roll call votes, each affiliated international and organizing committee is entitled to one vote for each member. L.I.U.'s are also entitled to one vote for each member. (Art. VII, Sec. 5.) Since the total membership of the L. I. U.'s is less than 1% of the total membership of the internationals and organizing committees, their voice in convention decisions is correspondingly small. Industrial union councils are entitled to one vote per council. (Art. VII, Sec. 5.)

Summary

The Court of Appeals for the District of Columbia, after analysis of a federation, analogized it to "a trade association made up of individual employers. Like the latter, it seeks to coordinate policy, provide encouragement, and perform certain staff functions such as research and publicity."

The analogy is only partially accurate. It would be more accurate to describe a labor federation as being similar to the United States Chamber of Commerce or the National Association of Manufacturers. These are not associations limited to a particular trade or industry but over-all employer associations containing many types of industries. They do not, as trade associations often do, take part in setting collective bargaining

patterns or even in setting patterns of doing business. Their function is to present to the public and to the legislature the position of businessmen on matters affecting business generally and to perform research and similar staff functions with regard to the interests of business generally rather than particular trades or industries.

Similarly, the C. I. O. is engaged in representing to the public and to legislative bodies the position of labor on general policy matters and in performing research and similar staff functions with regard to the interests of labor generally. The C. I. O. does not establish collective bargaining policies for its affiliated unions. Nor does it perform the specialized research or other staff work which is normally done as an aid to bargaining in particular industries. Such matters, like the studies and statistics with regard to a particular industry which trade associations collect, are normally performed by the individual unions, most of which have their own research departments, publicity departments, legal departments, legislative representatives, etc.

The C. I. O. does differ, of course, from trade associations and from national associations of businessmen in many respects. Its organizing activities have no precise parallel on the employer side. But with respect to the point in issue here—the relationship between the federations and their affiliated internationals—the parallel is remarkably close. There are other, looser, nation-wide labor associations such as the Confederated Unions of America, in which the parallel with the employer associations may be even more precise.[18] All of them, whatever the degree of looseness of the affiliation, have these characteristics—they are not unions but associations of unions, they do not bargain collectively or supervise or direct collective bargaining, they do not call strikes or terminate them, they do not control in any way the elections of officers or the conduct of the internal affairs of their associated unions, they do not—in short—perform any of the functions with which the National Labor Relations Act is concerned.

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[18] A description of these organizations is contained in the Directory of Labor Unions (1950) published by the United States Department of Labor.

THE APPLICATION OF THE STATUTE

The Board's Construction

Sections 9 (f) (g) and (h) require compliance (1) by the labor organization which files a petition or makes a charge and (2) by "any national or international labor organization of which such labor organization is an affiliate or constituent unit."

The great majority of petitions and charges filed by unions with the National Labor Relations Board are filed by locals. A survey of the titles of the union-initiated cases in the last published volume of NLRB reports (Vol. 88) discloses that out of 233 representation petitions, 144 were filed by locals or other geographically limited subordinate units and 72 by international.[19] Two were filed by the American Federation of Labor on behalf of federal locals. Examination of other volumes of NLRB reports discloses a similar distribution.

In the majority of cases, therefore, the application of the statutory requirement poses no difficulties. The petitioning local must comply and the national or international union with which it is affiliated must also comply. If there is no national or international and one of the federations is temporarily performing the functions of an international with respect to that local, then both the local and the federation which is acting *in loco parentis* must comply.

No compliance in addition to these two layers specified in the statute are required. Neither the intermediate organizations (such as district, regional, or departmental organizations) between the local and the national or international union nor the federations, committees or associations with which the international may be affiliated are required to comply.

The situations would appear to be somewhat different when the international itself files the petition or makes a charge, as is the case here. It could be argued that in such cases only the international would be required to comply. The Board, however, has taken the view that this would encourage evasion of the statute. Where locals could not or would not comply the

[19] The 15 petitions filed by independent unions are not included in this break-down.

petition would simply be filed in the name of the international. Hence the Board has taken the view that the two layer compliance requirement of the statute must be satisfied even if the petition is filed in the name of the international. That is, if a local exists in the particular bargaining unit the international will be regarded as acting on its behalf and the local, as well as the international, will be required to comply. *United States Gypsum Co.*, 77 NI RB 1098; *Lane-Wells Company*, 77 NLRB 1051. This rule was held to apply even where the bargaining unit was nationwide and all bargaining, strikes, etc., were alleged to be directly managed by the international, the locals being merely convenient administrative units. Even there the Board held that every local which admitted to membership employees within the collective bargaining unit must comply. *Prudential Insurance Co.*, 81 NLRB 295.

The Board has thus required two-level compliance in every case,* irrespective of whether the international or the local files the petition or the charge. It has not required three, four or five level compliance because the statute plainly does not go beyond the internationals and the subsidiary units engaged in representing employees.

The standard which the Board has used in determining whether federation compliance is required in a particular case is whether there is in existence an autonomous international with complete and independent control of collective bargaining. If there is such an organization, and it has complied, and the local involved has also complied, the Board has not required, in addition, compliance by the organizations with which the international may be affiliated, if those organizations have no control directly or indirectly over collective bargaining. Where there is no international and the federation substitutes for it, compliance by the federation has been required. And where the organization purporting to perform the functions of an international is in fact subject to the direction and control of the federation, there too federation compliance has been required.

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* Where there is no local in existence, of course, the Board does not require that one be created and in such situations there is only one level of compliance. Thus the National Maritime Union (C.I.O.) has no locals and only the national union is required to comply.

The latter type of case is particularly significant. In *American Optical Co.*, 81 NLRB 453, the Board refused to process a representation petition filed by the Optical Workers Organizing Committee (CIO). It found that this organizing committee did not have independent status and autonomy but was subject to the direction and control of the C. I. O. Hence it concluded that C. I. O. compliance was a condition precedent to the processing of the petition and dismissed it. In *Chesapeake and Potomac Telephone Co. of Virginia*, 82 NLRB 810, however, a different result was reached with regard to a differently constituted organizing committee. In this case the Board found that the organizing committee in fact did have the powers and the independence of an international union and that it was not subject to C. I. O. direction or control. Hence it concluded that compliance by the local organization and the organizing committee was sufficient.[a]

The Board has thus uniformly applied the concept that in requiring compliance by "national or international" labor organizations the statute required compliance by the nationwide organizations in which reside the ultimate control of collective bargaining, of internal organization and of strike policy. In the few cases where it found that those powers were exercised by the federations it has refused to process petitions in the absence of compliance by the federations. Where it found national or international unions which exercised such powers independent of the federations it has considered compliance by the local and the international as sufficient.

Alternative Constructions

If the line which the Board has drawn is discarded completely, then a particular union could not file a petition with the Board unless every organization, whether engaged in collective bargaining or not, with which the particular union was affiliated also complied. There are many such organizations, both national and international in scope. At the world level

[a] Lest it be considered that the result was unrealistic, it should be noted that the organizing committee in that case performed every function of an international and in fact shortly thereafter became an affiliated international. In the past, organizing committees have gone so far as to disaffiliate from the C.I.O. See *Edwin Bell Co.*, 46 NLRB 619.

there are the International Labor Organization, the Trade Secretariats, the International Confederation of Free Trade Unions and others. At the national level there are such labor organizations as the United Labor Policy Committee. Compliance of the C. I. O. and the A. F. L. as federations can be required in addition to compliance by the locals and internationals only if the compliance of all of such organizations be also required. Once the standard adopted by the Board is abandoned there seems to be no line other than that the organization in question be national or international in scope.

There is one possible construction which would include the A. F. L. and C. I. O. but exclude other similar organizations. Under such construction, compliance by the federation would be required in a particular case even though the federation did not occupy the position or perform the functions of a national or international union in that case for the reason that it did perform such functions in other cases. Thus, the fact that C. I. O. compliance is a condition precedent to the processing of petitions filed by directly chartered local industrial unions would be used to require its compliance as a condition precedent to the processing of petitions filed by other local unions who are controlled, not by the C. I. O., but by their internationals. The argument seems to be self-defeating. C. I. O. compliance is required when an L. I. U. petitions precisely because the C. I. O. performs the functions of an international with regard to that L. I. U. The fact that it is required to comply in those cases would seem to preclude a requirement of compliance where the functions of an international with regard to a local are in fact performed by the local's international and not by the C. I. O.

Such a construction would also lead to most peculiar results. The officers of the C. I. O. are all officers of international unions or organizing committees. In their capacity as union officers they are subject to all the pressures Congress intended to be applied to induce compliance with Sections 9 (f) (g) and (h). The requirement that they all comply with Section 9 (h) before any union affiliated with C. I. O. can be considered in compliance would lead to the peculiar result that the failure of the United Steelworkers of America to comply would dis-

qualify the United Textile Workers and all of its locals, since the President of the Steelworkers is also President of the C. I. O. Any one of the ten major unions within the C. I. O. thus could prevent any other union affiliated with the C. I. O. from complying—since each is represented by a C. I. O. officer. On the other hand, if all of the major internationals did comply, the requirement of Section 9 (h) would automatically be satisfied without the requirement that the individual officers also comply as officers of the C. I. O.

At the present time the C. I. O. is in compliance *as* C. I. O. But all of its officers are also in compliance with Section 9 (h) as officers of international unions or organizing committees.

A list of the C. I. O. officers and their union office follows:

Name	C. I. O. Office	Union Office
Philip Murray	President	President, United Steelworkers of America
James B. Carey	Secretary-Treasurer	President, International Union of Electrical Workers
Joseph A. Beirne	Vice-President	President, Communication Workers of America
L. S. Buckmaster	Vice-President	President, United Rubber Workers
Joseph Curran	Vice-President	President, National Maritime Union
Allan S. Haywood	Vice-President	Chairman, Insurance Workers Organizing Committee
O. A. Knight	Vice-President	President, Oil Workers International Union
Michael Quill	Vice-President	President, Transport Workers Union
Walter P. Reuther	Vice-President	President, United Automobile Workers
Emil Rieve	Vice-President	President, United Textile Workers
Frank Rosenblum	Vice-President	Secretary-Treasurer, Amalgamated Clothing Workers

Satisfaction of the requirements of Section 9 (h) does not, of course, mean that Sections 9 (f) and (g), relating to financial and other reports, are satisfied. But with regard to those sections both the requirements themselves and their legisative histories show that Congress did not even contemplate that federations *qua* federations should be subject to them. See *Northern Virginia Broadcasters*, 75 N. L. R. B. 11, at 14. See also *Legislative History of the Labor Management Rela-*

tions Act, 1947, p. 401 (House Minority Report), p. 484 (Senate Minority Report), pp. 555-556 (House Conference Report), p. 1014 (Senate statement by Senator Taft).

The net effect of requiring federation compliance in addition to local compliance and international compliance would thus be either to disqualify some unions because other unions, whose elections they do not control, have failed to comply or, if all do comply, to require the federations to file reports which are largely meaningless and were certainly not contemplated by the Congress.

CONCLUSION

We have not, in this brief, attempted to argue extensively the merits of the question presented to the Court for decision. We believe most strongly that the court below erred and that its judgment should be reversed. The arguments presented by the petitioner based on the statutory language and its legislative history overwhelmingly demonstrate, we believe, the correctness of its position. We support them completely. In the spirit of the Court's amended Rule 27, we have refrained from repeating or rephrasing them at length. We have attempted, rather, to present to the Court the information concerning the structure of the federations and the alternatives open to the Court which, in our view, should be the proper background for the resolution of the arguments presented by the parties.

In our view, this material overwhelmingly confirms the position taken by the Board.

Respectfully submitted,

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